

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 756 OF 2018

ALONG WITH

CRIMINAL APPLICATION (APPA) NO. 1078 OF 2019

Pranav Tukaram Borase

Age : 28 Years, Occ. Private Job,

R/o. Samruddhi Row House No.5,

Wavre Nagar, Khutwadnagar, Nashik

... Appellant

Vs.

State of Maharashtra

... Respondent

Mr. C.P. Sengaonkar for Appellant.

Mr. S. S. Hulke, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 30th September 2020.

JUDGMENT :

The appellant, original accused No.1, has impugned Judgment and Order dated 5th May 2018 in Sessions Case No. 300 of 2016 passed by the learned Additional Sessions Judge-3, Nashik, convicting him under Section 307 read with 34 of the Indian Penal Code (for short, "I.P.C.") and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/-, in default of payment of fine to further suffer rigorous imprisonment for six months; under Section 427 read with 34 of the I.P.C. and sentenced to suffer

rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default of payment of fine to further suffer rigorous imprisonment for one month; under Section 504 read with 34 of the I.P.C. and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default of payment of fine to further suffer rigorous imprisonment for one month; and under Section 506-II read with 34 of the I.P.C. and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.3,000/-, in default of payment of fine to further suffer rigorous imprisonment for three months. The Trial Court has directed that, all the sentences shall run concurrently.

2. Heard Mr. Sengaonkar, learned counsel for the appellant and Mr.S.S.Hulke, learned A.P.P. for respondent-State. Perused entire record.

3. Appellant is original accused no.1. The record reveals that, original accused Nos.2 and 3 after were released on bail during the pendency of trial, jumped the bail and declared absconding. The trial as against the appellant was therefore separated.

The prosecution case in brief is that, the first informant, Shri Dilip Dattu Datir (PW-1) was a social worker and City Co-ordinator of Nashik city, of a political party namely 'Shivsena'. He was resident of Shrikrushana Nagar, Ambad, Nashik and was dealing in real estate. That, on 15th April 2016 at about 8.15 p.m., he along with his nephew Sagar Ghatol (PW-4) and his

driver namely Pravin Suryawanshi (PW-3) were travelling by a Scorpio jeep bearing No. MH-15-EX-0111. Sagar Ghatol (PW-4) wanted to purchase medicines and therefore the said vehicle was stopped in front of Indrayani Medical, Opp. Mayur Hospital, Mauli Lawns, Ambad, Nashik. PW-4 got down from the vehicle and had been to Indrayani Medical Shop for purchasing medicines. Dilip Datir, the informant, and his driver Pravin Suryawanshi (PW-3) were sitting in the said Scorpio vehicle. At that relevant time, one gray color Swift car came there and the appellant along with original accused No.2, Bala Kapadnis, alighted from it. Both of them hurled stones on the windscreen and side glass of the Scorpio jeep. They pulled Dilip Datir (PW-1) out from his vehicle. The appellant gave a blow with sickle on the neck of the informant (PW-1). However he was successful in warding off the same, but in the said process PW-1 sustained an injury on the left side of his neck. Appellant threatened the informant that, he would kill him by pumping bullet. Appellant told him that, he had demanded Rs.1 lakh from the informant, but, the same was not paid to him and therefore, the appellant would see that, how the informant would contest ensuing election. The original accused No.2 Bala Kapadnis gave fist blows on the chest of the informant. The first informant (PW-1) succeeded in escaping from the clutches of the appellant and accused No.2 Bala Kapadnis and started running away from the spot. It was alleged that, at that time, the appellant took out a pistol

which was concealed at his waist and fired a bullet from it towards the informant. The informant (PW-1) dodged it, by sitting down and therefore the bullet missed its target. The informant while running away from the scene of offence came across with one of his acquaintance by name Shri Sunil Jadhav. He carried informant from his motorcycle straightly to Ambad police station. When the informant was busy at Ambad police station in recording his first information report, he received two consecutive calls on his mobile number 9921323111 from a mobile number 7276240555 whereupon the appellant again threatened the informant with dire consequences and threatened to commit his murder. The informant (PW-1) thereafter, went to the hospital namely Siddhi Vinayak Hospital of Dr. Nitin Hire (PW-8) situated at Gangapur Road, Nashik who treated him. During the course of clinical examination of the informant, PW-8 noticed the following injuries:-

- i) Incised wound over posterior auricular region left side 3 x 1 cm. skin deep active bleeding.
- ii) Fracture left costal margin (last rib)
- iii) Fracture to 7th rib left lateral.

Ambad police station was already informed about the said incident and firing by the appellant and therefore the police machinery was alerted. Police Officers thereof immediately swung into action. After receipt of

specific information, police chased the Swift car from which the appellant and other accused persons were travelling. The said Swift car dashed to a divider at Ganesh Chowk. Police apprehended appellant and other accused persons from the said car. Search of appellant was taken in presence of Mr. Ankush S. Bhor (PW-7) and the police found one country-made fire arm with three live loaded cartridges in the possession of appellant. Police also seized two mobile phones from the appellant. A detailed panchnama of seizure was drawn by the police which is at Exh.40-A on record. During the course of investigation, police collected Call Detail Record (CDR) of the Mobile Phone No. 7276240555 which was found in possession of the appellant from the concerned mobile service providing company. On completion of investigation, Samir Wagh (PW-9), Investigating Officer, submitted final report as contemplated under Section 173(2) of the Code of Criminal Procedure in the Court of learned Judicial Magistrate First Class. The learned J.M.F.C. took cognizance of the offence. As the offence alleged against the appellant was exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the said case to the Court of Sessions as contemplated under Section 209 of Cr.P.C.

As noted earlier, after releasing the other two accused persons on bail, they jumped it and were declared absconding. The trial as against the

appellant was therefore separated.

4. Trial Court framed charge below Exhibit-17. The said charge was read over and explained to the appellant in vernacular language to which he denied and claimed to be tried. The defence of the appellant was of total denial. The prosecution in support of its case, examined in all ten witnesses. The learned Trial Court after recording evidence and hearing the learned counsel for the respective parties, convicted and sentenced the appellant by its impugned Judgment and Order dated 5th May 2018, as noted hereinabove.

5. Mr. Sengaonkar, learned counsel appearing for the appellant submitted that, Dr. Hire (PW-8) did not produce x-ray plate to support his clinical analysis pertaining to fractures described injury nos.2 & 3 as above. He submitted that, Prashant Badgujar (PW-2) a panch witness to the scene of offence/spot panchanama (Exh.33), in his cross examination has admitted that, the process of recording of the spot panchanama was completed at about 9.00 p.m. However, the said spot panchanama at its end mentions that, it was started at about 00.15 a.m. on 16th April 2016 and completed at about 01.15 a.m. He submitted that, spot panchanama therefore can not be relied upon, as it creates serious doubts about complainant's case of happening of incident at about 8.15 p.m. He further submitted that, the name of appellant has been mentioned as Pravin Borase by mobile service provider company in the Call

Detail Report (CDR) given to the prosecuting agency (Exh.55) and not Pranav Borase i.e. the name of the appellant. He submitted that, therefore the mobile No.7276240555 which was seized from the appellant by the PW-9 was of different person than that of appellant. He submitted that, the eye witnesses are interested witnesses and therefore their testimony can not be relied upon. He submitted that, the PW-5 has turned hostile and therefore his evidence cannot be relied upon at all. He submitted that, the prosecution has failed to prove its case beyond reasonable doubt and therefore the appellant may be acquitted from the charges framed against him. In the alternative, he submitted that, if this Court is not inclined to accept submissions advanced by him and to uphold the conviction of the appellant, in that event, the appellant may be sentenced to the period which he has already undergone as of today. He therefore prayed that, the present Appeal may be allowed.

6. Mr. Hulke, learned A.P.P. submitted that, though Shri Dnyaneshwar Matale (PW-5) was declared hostile by the prosecution, the said witness had supported the case of prosecution upto the stage of appellant assaulting PW-1 with a sickle. He submitted that, the said witness has also deposed that, the appellant hurled stones on the car of Dilip Datir (PW-1). He submitted that, rest of the eye witnesses of the prosecution have supported the case in its entirety. That, all the prosecution witnesses were knowing the

appellant by his name, being a known criminal from the vicinity of Ambad, Nashik city and therefore, the prosecution has succeeded in not only establishing identity of the appellant, but the alleged offence committed by him also. Learned A.P.P. therefore submitted that, there are no merits in the present Appeal and prayed that the Appeal may be dismissed.

7. Present case is based on ocular evidence. Dilip Datir (PW-1) is the injured witness. Pravin @ Somsing Suryawanshi (PW-3), Sagar Ghatol(PW-4), Dnyaneshwar Matale (PW-5) and Sharad Gaidhani (PW-6) are the other eye witnesses to the present crime.

8. Dilip Datir (PW-1) in his testimony has stated that, the incident in-question occurred on 15.04.2016 between 8:00 to 8:15 pm, in front of Indrayani Medical, opposite to Mayur Hospital, near Mauli Lawns, Ambad, Nashik. On the date and time of incident, he along with his nephew Sagar Ghatol (PW-4) and driver Pravin Suryawanshi (PW-3) were travelling towards Khutwad Nagar from his motor vehicle, Scorpio Jeep bearing No. MH-15-EX-0111. His nephew Sagar Ghatol (PW-4) wanted to purchase medicines and therefore, they stopped their vehicle near Indrayani Medical. His nephew Sagar Ghatol (PW-4) went to Indrayani Medical for purchasing medicines. PW-1 and his driver PW-3 were sitting in his car. At that time, one gray color swift car came from opposite direction and stopped in front of his car. From

the said swift car the appellant, a known criminal from his locality and Bala Kapadnis (co-accused) alighted. Both of them hurled big stones on his car, due to which the front glass broke and caused damage to it. The appellant and co-accused thereafter forcibly dragged him out from his vehicle. The appellant inflicted a blow with sickle on the person of the appellant. PW-1 tried to ward off the said assault, however he received a stab wound on the left side of his neck and blood started oozing out from it. The appellant thereafter abused PW-1 in filthy language and told him that, 'he had demanded Rs.1,00,000/- from the PW-1, however he did not pay it. He would kill PW-1. He would see how the appellant contest this election. Appellant told PW-1 to do whatever he wants to do and police will not be able to do anything even if a crime is registered against him'. Appellant and co-accused Bala Kapadnis thereafter assaulted PW-1 with fists on his chest. PW-1 successfully rescued himself from the clutches of appellant and started running. However, the appellant whipped out a pistol concealed at his vest and fired at PW-1. PW-1 dodged the said bullet by instantaneously sitting down and thereafter again started running from the scene of offence. In his way, PW-1 met Mr.Sunil Jadhav and from his motorcycle he straightly went to Ambad Police Station. When PW-1 was present in the Police Station, he received a phone call on his mobile number 9921323111 from the appellant. Appellant again abused PW-1 in filthy language and told him that, 'though the PW-1 has escaped from his clutches

the reverse counting of appellant has begun. PW-1 may lodge whatever case he wants to, he (appellant) would not keep mum without firing bullet in the anus of PW-1. He (appellant) would come out within two months'. When PW-1 was lodging First Information Report (Exhibit-26), he again received a call from the appellant. Appellant told PW-1 that 'he is going to fire bullets on PW-1 and the family members of PW-1 would lodge crime for murder of PW-1'. PW-1 lodged First Information Report (F.I.R.). PW-1 has proved the contents of it and his signature on the F.I.R.. He has also proved the 'Proforma First Information Report' (Exhibit-27). PW-1 has further deposed that, he thereafter took medical treatment at Siddhi Vinayak Hospital. PW-1 has identified appellant as the same person in the Court.

In the detailed cross-examination of PW-1 nothing beneficial for the appellant has been elicited.

9. Pravin @ Somsing Suryawanshi (PW-3) was driver of PW-1. Sagar Ghatol (PW-4) is nephew of PW-1. Pravin @ Somsing Suryawanshi (PW-3), Sagar Ghatol (PW-4), Dnyaneshwar Matale (PW-5) and Sharad Gaidhani (PW-6) are eye witnesses to the present crime. Out of the said witnesses Sharad Gaidhani (PW-6) is an independent witness. Pravin Suryawanshi (PW-3), Sagar Ghatol (PW-4) and Sharad Gaidhani (PW-6) have fully corroborated version of Dilip Datir (PW-1) i.e. informant. These witnesses have also narrated the damage caused by the appellant and co-accused to the

vehicle of informant (PW-1) and assault by appellant with sickle and firing from a fire-arm by him. In their searching cross-examination, nothing fruitful to the appellant has been brought on record.

Though Dnyaneshwar Matale (PW-5) has been declared as a hostile witness by the prosecution, perusal of his testimony would clearly indicate that, he has supported prosecution case upto the stage of assault by appellant with a sickle on PW-1. PW-5 thereafter by resiling from his statement recorded under Section 161 of Cr.P.C. has stated that the blow of sickle given by appellant missed its target. He was thereafter declared hostile.

It is thus clear from the testimonies of abovenoted witnesses that, on the date and time of incident, the appellant initially gave a blow on neck of first informant (PW-1) with a sickle and thereafter fired at him from a pistol. The identity of the appellant has been duly proved by the prosecution. The act alleged against the appellant has also been proved beyond reasonable doubt by the prosecution.

10. Prashant Badgujar (PW-2) is a panch witness to the scene of offence. He has deposed that, at the spot of incident, he saw a Scorpio jeep bearing number MH-15/0111 with damaged wind shield and glasses of side windows. That an empty brass cartridge was found at the scene of offence. He has proved scene of offence panchanama, Exh.33.

Ankush Bhor (PW-7) is a panch witness to the seizure of country-

made pistol with three live cartridges and two mobile phones which were seized by the police from the person of appellant. He has proved the seizure panchanama at Exhibit-40-A.

11. Samir Wagh (PW-9), the Investigating Officer of the present crime has deposed that, after seizure of the said articles i.e. empty shell of cartridge from the scene of offence and country-made pistol along with three live cartridges, the said articles were sent to Forensic Science Laboratory, Mumbai. Ballistic Expert Report dated 14.09.2016 (Exhibit-52) has been duly proved by him. In the said report, the Ballistic Expert has stated that, the country-made pistol (Exhibit-1) sent to him was in working condition and capable of chambering and firing 7.65 mm pistol cartridges. That, randomly selected one 7.65 mm pistol cartridge was successfully test fired through the country-made pistol in Exhibit-1 therein. It further stated that, the empty 7.65 mm pistol cartridge case without primer cap was unsuitable for ballistic comparison.

12. Dr.Nitin Hire (PW-8) had treated the informant (PW-1) immediately after the assault on PW-1 at about 11.55 pm. He had noticed 3 injuries on the person of informant (PW-1) which are noted in para number 3 above. He has deposed that, all the injuries were within six hours prior to 11.55 pm. That injury No.1 was simple in nature while injury Nos.2 and 3 were grievous. Injury No.1 was probably caused by a sharp weapon, while injury Nos.2 and 3 were caused by hard and blunt object. He has proved

Injury Certificate dated 15.04.2016 at Exhibit-42.

13. Dhananjay Yadav (PW-10) was serving as Nodal Officer in Tata Tele Services (Maharashtra) Limited and has been examined by the prosecution to prove the fact that the mobile number 7276240555 was issued by the telephone company in favour of appellant. PW-10 has deposed that, on 15.04.2016 mobile number 7276240555 had called mobile number 9921323111 (number of PW-1) at 9:20:25 and 9:24:23 pm. He has deposed that, at the time of first call the tower location of the mobile number of appellant was at Satpur, Nashik and at the time of second call, it was near Waware Nagar, Nashik. He has proved the Application form submitted by the Appellant for getting connection from the mobile company and other related documents, which are on record and collectively marked as Exh.55. It is to be noted here that, in his Application form to the mobile company, the Appellant has written his name as '*Pranav*'. The said fact has not been disputed by the Appellant while cross-examining the said witness.

It is to be noted here that, the said mobile bearing number 7276240555 was seized by the Investigating Officer (PW-9) from the person of appellant in presence of panch witness Ankush Bhor (PW-7) by effecting seizure panchanama Exh.-40-A.

14. In this background, the discrepancies pointed out by the learned Advocate for the appellant appears to be minor and inconsequential in nature.

All the aforestated witnesses have not only identified the appellant as the person who assaulted PW-1 on the date and time but have also proved the various documents on record. Assuming for the sake of argument, the telephone company would have issued sim-card in favour of somebody else and not in the name of appellant, what is relevant is finding of the mobile phone which was used in the commission of offence in the possession of appellant at the time of his arrest. This Court therefore is of the opinion that, there is no substance in the submissions advanced by the learned counsel for the appellant.

Aforenoted evidence available on record would clearly establish the fact beyond reasonable doubt that, it is the Appellant along with co-accused who has committed the present crime.

15. The Trial Court after taking into consideration mitigating and aggravating circumstances against the appellant has awarded him sentence of 7 years of rigorous imprisonment, which according to me is just, reasonable and proper.

16. Perusal of entire evidence on record and impugned Judgment and Order would clearly indicate that, there is no error committed by the Trial Court while passing impugned Judgment and Order. There are no merits in the Appeal.

Appeal is accordingly dismissed.

17. In view the dismissal of Appeal, pending Criminal Application therein does not survive and the same is also disposed off.

18. This Order will be digitally signed by the Personal Assistant of this Court. All the concerned will act on production by fax or e-mail of a digitally signed copy of this Order.

(A.S. GADKARI, J.)

Omkar S.
Kumbhakarn

Digitally signed
by Omkar S.
Kumbhakarn
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